

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

MICHAEL CURRY,)
Plaintiff,)
v.) CIVIL ACTION NO. 5:22-cv-88 (MTT)
G & S GAS SERVICE, INC.,)
Defendant/Third-)
Party Plaintiff,)
ROADSAFE TRAFFIC SYSTEMS, INC.,)
JAMES R. HOOKER, and LISK)
TRUCKING, INC.,)
Third-Party)
Defendants.)

ORDER

Third-Party Defendant RoadSafe Traffic Systems, Inc., (“RoadSafe”) filed a motion to dismiss in which it argues that it is immune from suit as an employer under the Georgia Workers’ Compensation Act. Doc. 17 at 1. In response, Third-Party Plaintiff G & S Gas Service, Inc., (“G & S”) contends that “only ‘an employer who pays workers’ compensation benefits to an employee is immune from liability as a third-party defendant in the employee’s tort action.’” Doc. 26 at 2 (citing *Georgia Dep’t of Hum. Res. V. Joseph Campell Co.*, 261 Ga. 822, 823, 411 S.E.2d 871 (1992) (citation omitted)). RoadSafe replied with evidence that it has actually paid workers’ compensation benefits and that G & S’s counsel knew these benefits were paid. Docs. 30; 30-1; 30-2; 30-3; 30-4. RoadSafe acknowledges that the Court’s consideration of

these documents will convert the motion to dismiss to a motion for summary judgment. Docs. 30 at 3 n.6; 30-5.

RoadSafe is correct that the motion to dismiss must be converted to a motion for summary judgment. The motion to dismiss, G & S's response, and the subsequent reply and surreply briefs clearly require the Court to consider matters outside the pleadings. Accordingly, the Court converts RoadSafe's motion to one for summary judgment under Rule 56. *See Fed. R. Civ. P. 12(d)* ("If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56."). Because there appears to be no good faith basis for G & S to deny that RoadSafe has paid workers' compensation benefits, G & S shall respond to RoadSafe's converted motion for summary judgment **no later than July 21, 2022**. RoadSafe shall file an appropriate reply within fourteen days. The parties may incorporate by reference their arguments made in previously filed briefs. RoadSafe need not refile the documents it submitted with its reply brief. To the extent either party relies on any other matter outside of the pleadings, those items should be filed with the party's supplemental brief.

SO ORDERED, this 8th day of July, 2022.

S/ Marc T. Treadwell
MARC T. TREADWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT